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Please reply to New Jersey

June 28, 2010

VIA ELECTRONIC FILING

Honorable William J. Martini, J.D.C.
Martin Luther King Jr., Fed. Building & Cthse.
50 Walnut Street
Newark, NJ 07102

RE: **MOSS, JOAN VS. GABRIEL TORRES, ET AL.**

Our File No. : 72954 ELH

Docket No. : 2:10-CV-03018-WJM (MF)

Dear Judge Martini:

I write in response to Mr. Nimensky's letter (Docket No. 3) requesting remand to Superior Court.

Defendants removed this matter to U.S. District Court because the 20th Count of the Complaint asserted against Secaucus a claim of taking without just compensation. While the Complaint made no explicit reference to either the State or Federal Constitution, because such a claim sounds under the Fifth Amendment of the U.S. Constitution and all defendants consented, it was indeed properly removed to U.S. District Court.

Nevertheless, plaintiff's counsel now asserts that such a claim, whether asserted under the New Jersey or U.S. Constitutions, is not ripe until a taking has been established yet no just compensation has been provided through an inverse condemnation action in state court. In other counts of the Complaint the plaintiffs demand damages on account of certain allegedly improper actions of Secaucus. It will not be until such claims fail, they now assert, that a claim of taking without just compensation will accrue.

We accept this characterization of the law, which compels dismissal of Count 20 as premature. Upon such dismissal, federal subject matter jurisdiction would disappear and the matter would be ripe for remand to Superior Court. Until such dismissal - or at least an express dismissal of any federal claims under the takings clause - federal jurisdiction remains appropriate.

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Thank you for your consideration.

Respectfully,

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Encl – letter

cc: **VIA ELECTRONIC FILING TO BOTH**

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